for The Defense

Volume 8, Issue 10 ~~ October 1998

The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

CONTENTS:

THE PROMISE OF NALTREXONE: A New Frontier in the Treatment of Alcohol/Opiate Abuse

By Linda Shaw
Client Services Coordinator, Trial Group A

> ***"What is the likelihood that you will be back in jail again, more specifically, in the next three years?"*** About one-third of the prisoners interviewed agreed that this would be likely--that they would return, and the reason: ...because there would be no change in the lifestyle or circumstances that resulted in their detention, *such as a continued use of alcohol or drugs..."*
> Jail Recidivism in Maricopa County, John R. Hepburn, PhD. etal., School of Justice Studies, Arizona State University, 1997
>
> The National Center on Addiction and Substance Abuse (CASA) states, "...of the $38 billion in correctional expenditures in 1996, more than $30 billion was spent incarcerating individuals who had a history of drug and/or alcohol abuse, were convicted of drug and/or alcohol violations, were high on drugs and/or alcohol at the time of their crime, or committed their crime to get the money to buy drugs." Further, CASA reports that: "The average cost per year to incarcerate an inmate in the United States is $20,674; the Federal cost is $23,542 and the State average is (approximately) $20,000."

Inconspicuously housed in an undistinguished Phoenix business complex off McDowell and Central, Assisted Recovery Center of Arizona is conducting one of the most exciting programs in the country for the treatment of alcoholism and opiate abuse. Its program is multi-faceted, but it rests on the effectiveness of a medication, Naltrexone, which was developed by Dupont Merck in 1984. Originally designed for the treatment of addiction to opiates, such as heroin, Naltrexone was also found to be useful in blocking the cravings for alcohol.

Spearheaded by its Director, Lloyd Vacovsky, ARCA is blazing new trails in trying to stem the pervasive tide of criminal offenders flooding the criminal justice system and stressing it to the point where it is virtually in a state of gridlock.

(cont. on pg. 2) ☞

Originally involved in case management for homeless alcoholic clients, Vacovsky became intensely discouraged by the immense relapse rate experienced by clients grappling with the frustration and despair of using the 12-Step Recovery model to overcome their incessant craving for alcohol and/or opiates. He states:

> I have no objection to the 12-Step Recovery model--the Minnesota Model, as it is known--however, it still relies on chemical abusers making permanent changes in their drinking/drugging behavior by enhancing their spiritual life. The fact that it presupposes that by sheer willpower and/or strength of character the abuser will be able to neutralize the compulsive urge to drink/use drugs is the fallacy which undermines successful treatment in this field. It is this false assumption which almost assures that huge numbers of people are doomed to failure.

"Naltrexone is *not a magic bullet--but it is a crucial tool* which will assist the addict in staying drug/alcohol free."

Quite by chance, Vacovsky read an article in the *Arizona Republic* in 1995 which seemed to offer a powerful alternative. It described the effectiveness of Naltrexone when used as part of a comprehensive treatment program. That sparked an instant response in Vacovsky: "I decided I had to do some research on this medication and find out if it truly offered sufferers a more optimistic prognosis." To that end, he contacted Dupont and eventually developed a partnership with them to dispense Naltrexone to his clients in a special pilot project.

for The Defense Copyright©1998

Editor: Russ Born

Assistant Editors: Jim Haas
Lisa Kula
Frances Dairman

Office: 11 West Jefferson, Suite 5
Phoenix, Arizona 85003
(602) 506-8200

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 5th of each month.

"Naltrexone is *not a magic bullet--but it is a crucial tool* which will assist the addict in staying drug/alcohol free." Vacovsky emphasizes.

ARCA's treatment modality is predicated on the fact that alcoholism and opiate addiction are brain diseases and should be treated medically. Alcohol, or opiates, in themselves, do not cause the euphoria and sense of well-being associated with their repeated use, as ARCA's brochure explains:

> These drugs may be compared to a key, which unlocks the chemicals in the brain (endorphins) which cause the euphoria or "high." Endorphins are known to influence such human issues as self-esteem, dealing with stress, moods, emotions, and even pain. With repeated consumption of alcohol(opiates) over a long period of time, the brain begins to slow down (and may even shut down) the natural production and release of endorphin. A result of this shutdown insures that an individual will have drastically lowered self-esteem, have an inability to deal with stressful situations, and be moody and emotional.

Vacovsky relies on knowledge developed by the scientific community which clearly establishes that the brains of addicted individuals vary markedly from those who are non-addicted. For example, in his October 3, 1997 article, "Addiction is a Brain Disease, and it Matters", Alan I. Leshner, of the National Institute on Drug Abuse, National Institutes of Health, reported:

> . . .virtually all drugs of abuse have common effects, either directly or indirectly, on a single pathway deep within the brain. . . Activation of this system appears to be a common element in what keeps drug users taking drugs. This activity is not unique to any one drug; all addictive substances affect this circuit...not only does acute drug use modify brain function in critical ways, but prolonged drug use causes pervasive changes in brain function that persist long after the individual stops taking the drug...*the addicted brain is distinctly different from the nonaddicted*

(cont. on pg. 3) ☞

brain...Initially, drug use is a voluntary behavior, *but when the metaphorical switch is thrown as a result of prolonged drug use, the individual moves into the state of addiction, characterized by compulsive drug seeking and use!!* (Author's emphasis)

According to Percy Menzies, Associate Director, Dupont Pharmaceuticals, Naltrexone has been particularly effective in jail or prison settings where the administration of the medication was begun 60 - 90 days before the inmate was released from custody. As part of a comprehensive rehabilitation program, the medication has been shown to be about three times more effective than placebos in preventing relapse--58% to 23%. *Naltrexone in the Treatment of Alcohol Dependence,* reprinted from *Archives of General Psychiatry* 1992.

"Incarcerating opiate addicts and alcoholics has proven ineffective and serves little purpose other than exposing them to other drugs of choice and/or acquainting them with new modes of criminal behavior to perpetuate their active addictions."

ARCA uses Naltrexone in conjunction with the "Pennsylvania Model" Recovery Program. This involves a cognitive approach to achieving behavioral change and includes such techniques as encouraging clients to develop wholesome leisure activities, teaching and rehearsing anger control, stress management, problem-solving skills, and logging drinking/drugging behavior in a notebook. Instead of emphasizing the past, Vacovsky's groups delve into their current problems and strategize their solutions.

At a recent Saturday morning group session, I was struck by how effectively participants wrestled with and solved numerous seemingly mundane situations they were encountering: finding a job, dealing with co-workers who drank in social situations, handling money, and dealing with family members who had lost hope in their ability to remain sober.

The cost of Naltrexone is also factored into ARCA's partnership with Dupont. The medication is being donated for all indigent defendants and medical assessments are being conducted inside the jails at a reduced rate by ARCA's Medical Director, Dr. Michael Carleton.

This arrangement was initiated by the tireless efforts of Deputy Public Defender Cynthia Leyh, Trial Group D, who heard about Vacovsky's program and immediately seized upon its potential for effective treatment of many of her alcohol/opiate impaired defendants. (The full extent of Ms. Leyh's activities with regard to disseminating the Naltrexone Program to a wider audience will be discussed in a follow-up article.)

The struggle to cope with the myriad conflicts and issues which characterize "real life" is difficult enough for those of us who have normal endorphin levels. In the case of defendants already entrenched in the criminal justice system, however, the implications of using alcohol or other illegal drugs to manage life's problems with abnormal levels of endorphins is far more severe from a public policy point of view. Incarcerating opiate addicts and alcoholics has proven ineffective and serves little purpose other than exposing them to other drugs of choice and/or acquainting them with new modes of criminal behavior to perpetuate their active addictions. It is with that fact in mind that the buffer of Naltrexone becomes imperative from the perspective of long-term success. This is the challenge for defense attorneys and others working in the criminal justice system, and this is the promise of Naltrexone. ■

MY DAY AT DOC WITH CARLOS AND CLAUDIA

By Tom Timmer
Deputy Public Defender - DUI Unit

Despite your best efforts, your client is facing his or her first Aggravated DUI conviction and the required minimum of four months in the Arizona Department of Corrections (DOC). What is the first time, non-violent, convicted felon facing when remanded into custody by the judge in Superior Court? Following a brief stay at the First Avenue Jail, your client is taken to DOC for classification at either Alhambra for males or Perryville for females. The classification process is very important for those DUI clients who want to make the most of their four months in DOC. Classification looks at a client's background, including their criminal history, special needs and escape risks. In addition to the interview of the client, the presentence report is a heavily relied upon source of information.

In order to qualify for a DUI facility, your client has to have been found guilty or pled guilty, to a DUI

(cont. on pg. 4) ☞

charge only. If the sentence includes an aggravated assault, endangerment, manslaughter, or another charge resulting from the original case, your client will be ineligible. Even if your client has prior convictions that were dismissed as part of a plea bargain, they are still eligible for the DUI facility. It is also important that your client express a desire, and willingness, to participate in alcohol treatment available at the DUI facility. Defense counsel can improve their client's chances of being placed in a specific DUI facility by asking the sentencing judge to make a recommendation as to placement. While this aspect of the sentencing order is not binding on DOC, it is considered by DOC when the placement decision is being made.

DOC currently has four facilities set up for DUI inmates only. They are located in Phoenix, Florence, Douglas and Marana. The Marana facility is for females only. The other three are all male facilities. All of the DUI facilities are minimum security, run by a private corporation, Correctional Services Corporation, under DOC's direction. Correctional Services Corporation runs a number of jails and prisons around the country. DOC officials are present at each of these private facilities to oversee the operations of the prison. The four DUI facilities are specifically designed to provide treatment, education and counseling for alcohol abuse.

"It is also important that your client express a desire, and willingness, to participate in alcohol treatment available at the DUI facility."

The Phoenix facility for DUI is located in a converted warehouse on south 35th Avenue. The only clues that tell the first time visitor that this building is a prison are the high, barbed-wire fence and the ominous warning signs in the parking lot. The facility holds four hundred inmates, and capacity is eight hundred inmates. All are serving sentences for Aggravated DUI. Since all of the inmates are there for the same offense, the prison has had very little violence between the inmates or towards the guards. The Phoenix facility is relatively open and bright compared to Sheriff Joe's jails, with more freedom inside the prison, due to the type of inmate and the emphasis on treatment. Most of the "trouble making" inmates are threatened with a transfer to a medium security prison and sent there if necessary. There is a zero tolerance for weapons and violence. According to prison staff, the main infraction experienced at the facility is the violation of the smoking policy.

The programs offered at the Phoenix facility, in addition to alcohol treatment, include GED and English language classes. The alcohol abuse program is divided into four phases. The first phase is Pre-Treatment and includes twenty-four hours of classes. The second phase is labeled Continued Treatment and consists of eighty hours of classes and individual sessions. These first two phases are mandatory for all inmates at the facility. The third phase is entitled Relapse Prevention and consists of forty-eight hours of classes. The final phase is called Consolidation and Management and is sixty-four hours of classes. All of the classes are led by counselors with experience in alcohol abuse treatment.

In addition to the programs inside the prison, inmates are also allowed to work outside the prison under DOC contracts which provide for manual labor for other state or local government agencies. This is not a work furlough situation. The inmates are taken under guard to the work place, watched by guards, and returned to the prison at the end of the day. Some of the contracts provide for the inmates to earn up to the minimum wage (minus any reduction for restitution or other court ordered fees). Other inmates can work in the kitchen or the laundry inside the prison.

During a recent tour of the Phoenix DUI prison, the facility seemed unexpectedly quiet and open. The inmates are housed in dormitories that hold fifty inmates, with room for another dozen or so. The dormitories have bunk beds, tables, televisions, bathrooms, and pay phones. One guard sits in an adjacent room to the dormitory. Meals are brought in from the kitchen. The inmates are not confined to the dormitories, except for head counts. During the off-times, the inmates are allowed to use the library, gymnasium or the exercise yard. One thing that was pointed out during the tour was that the "law library" was contained in a locked file cabinet in the library.

Before the sentencing for Aggravated DUI, it would be best to advise your client of the opportunity available during their (hopefully) short stint at DOC. The programs offered at the DOC DUI facilities should be taken advantage of by your client because they will improve their chances of completing their subsequent probation successfully and in getting their driver's license reinstated. The completion of all the programs will make your client appear as a person who may not need additional alcohol treatment through the probation department. It will also help in reducing the amount of repeat business we get here at the Public Defender's Office. The first time felony DUI offender should, for the vast majority, not be given a felony conviction as is the typical case. However, if given the chance to deal with an alcohol abuse problem at the outset, it will lessen the chance of incurring future and potentially far more serious charges. ■

SON OF JOEL

By Joel Glynn
Deputy Public Defender - Appeals

Many of you know that I collect 16mm and 35mm movies, and that I have done so for over twenty years. Like most collectors, I prefer to think that my film library contains nothing but classics. Some of these classics include "Frankenstein" (1931); "Dracula" (1931); and "King Kong" (1933). These movies were so well received by the public that Universal Pictures eventually produced the following sequels: "Son of Frankenstein" (1939); "Son of Dracula" (1943); and the memorable "Son of Kong" (1933). You may now be asking yourselves, "How is this relevant to the article?"

The Arizona Rules of Procedure for the Juvenile Court were amended on June 1, 1996. The new amendments changed the format and procedure for appealing juvenile delinquency matters to Arizona's appellate courts. The new changes also caused lawyers in both the private and public sector to ask questions about how to initiate and prosecute juvenile appeals in a timely fashion. The December 1997 issue of *for the Defense* featured the top ten questions asked about juvenile appellate procedure under these new rules. Entitled "Joel's Top Ten", the article fielded the ten most commonly asked questions from the author's perspective. (That was me!) Since the article's publication, however, the Arizona Rules of Procedure for the Juvenile Court were amended once again. Those latest amendments became effective on January 1, 1998 and created a new generation of questions.

This new generation of questions, affectionately called "Son of Joel", is presented in this sequel to help you shepard your juvenile appeal through this new maze.

QUESTION # TEN: I know that a juvenile has fifteen (15) days after the disposition hearing to file a *Notice of Appeal*. When does that 15-day period begin to run?

A juvenile's right to appeal is authorized under Rule 25(a), Arizona Rules of Procedure for the Juvenile Court ("RPJC"). A *Notice of Appeal* must now be filed with the clerk of superior court no later than fifteen (15) days after the final order of the juvenile court is filed with the clerk. RPJC 25(a). RPJC 25(a) was amended to require that the *Notice of Appeal* be filed "no later than 15 days after the final order is filed with clerk" rather than "within 15 days after the final order is filed with the clerk". This change was designed to eliminate time-consuming and pointless litigation over the meaning of the language in former RPJC 25(a). The "final order" for purposes of RPJC 25(a) is the disposition order, if there is no issue of restitution. If there is no issue of restitution, the "final order" for purposes of Rule 25(a) would be the disposition order, because it is the "one that disposes of all issues. . . before the juvenile court." *In re Maricopa County Juvenile Action No. J-74222*, 20 Ariz. App. 570, 571, 514 P.2d 741, 742 (1973). A *Notice of Appeal* filed not later than 15 days after the signed disposition order is filed is timely as to both the adjudication order and the disposition order. (Id.). However, if there is an issue of restitution, the restitution order becomes the "final order" for purposes of RPJC 25(a), because the order denominated "disposition" is interlocutory in nature when restitution remains an unresolved issue. *In re Eric L.*, 189 Ariz. 482, 943 P.2d 842 (App.1997). Consequently, when the issue of restitution remains an open question and/or a hearing on the issue of restitution is set at a future date, the final order for purposes of RPJC 25(a) is the restitution order. (See also, RPJC 25(d)(2)(i)). Therefore, no appeal can be taken until the restitution order has been entered. The *Notice of Appeal* should be filed not later than 15 days after the written restitution order is signed by the judicial officer **and** filed by the clerk. Under this scenario, a *Notice of Appeal* would be timely as (1) the adjudication order, (2) the disposition order, and (3) the restitution order. *In re Eric L.*, supra.

"The significant date is not the day that the judge or commissioner signs the order or the date that appears at the top of the minute-entry. Rather, the important event is the filing date."

The "final order" must be in writing and signed by the judicial officer. The "final order" may be in the form of either a minute entry or separate written order prepared by counsel. RPJC 25(a). The significant date is not the day that the judge or commissioner signs the order or the date that appears at the top of the minute-entry. Rather, the important event is the filing date. "Filing with the clerk" takes place when the clerk (1) affixes a file stamp on the signed minute-entry or separate written order; or (2) marks the date of filing on the signed minute-entry or separate written order; or (3) separately memorializes the date of filing in the clerk's official records. RPJC 25(a). For example, if a juvenile court judge signed the minute-entry or separate written order on December 10, 1998, but the clerk did not file it until December 13, 1998, the juvenile would have to file a *Notice of Appeal* no later than 15 days after December 13, 1998 or by December 28, 1998.

(cont. on pg. 6) ☞

QUESTION # NINE: What happens if I don't file the *Notice of Appeal* until after the 15-day period has run? Can I ask for a delayed appeal and where do I file my pleadings?

Yes. The new amendments to RPJC resolved some confusion caused by the 1996 amendments. Former RPJC 29(b) did not make it clear whether the Court of Appeals or the Superior Court was to rule on motions to excuse the late filing of *Notices of Appeal*. It is now clear that a motion to excuse the late filing of an appeal is to be filed in juvenile court and heard by the Presiding Judge of the Juvenile Court. RPJC 29(b).

QUESTION # EIGHT: Has the content of the *Notice of Appeal* changed under the new amendments, effective January 1, 1998?

Yes. Former 25(b) and (c) required the *Notice of Appeal* to identify:

1) The party taking the appeal
2) The order(s) from which the appeal was taken.

"The presumptive transcript in a delinquency case included the adjudication and disposition hearings and the probable cause and transfer phases of the transfer hearing in a transfer appeal."

The 1998 amendments, RPJC 25(c) and (e), now require the *Notice of Appeal* to identify:

1) The party taking the appeal
2) The order(s) from which the appeal is taken
3) For a non-governmental appellant, whether appellant or cross-appellant proceeded with appointed counsel in juvenile court.

QUESTION # SEVEN: Is it the clerk's responsibility or counsel's responsibility to include the transcripts of reported proceedings in the record on appeal after the Designation of Record is filed?

Formerly, it was the responsibility of counsel. The responsibility now belongs to the clerk's office. Prior to January 1, 1998, appellant was required to file a *Designation of Transcript* not later than five (5) days after filing the Notice of Appeal. Appellant was also required to serve the *Designation of Transcript* on the court reporter or word processing personnel of the juvenile court (if the proceedings were tape-recorded). Under former RPJC 25(e), the *Designation of Transcript* specifically identified "the proceedings constituting the presumptive transcript by date or dates. . . ." The presumptive transcript in a delinquency case included the adjudication and disposition hearings and the probable cause and transfer phases of the transfer hearing in a transfer appeal. (See, former RPJC 25(d)(1)). If a transcript of other proceedings was deemed necessary for the appeal, appellant could include those transcripts in the record on appeal by specifically listing the date or dates of the additional proceedings in the *Designation of Record* form. (See, former RPJC 25(e)). Appellant is no longer required to file a *Designation of Transcript*. The so-called "presumptive transcript" on appeal was also eliminated.

Now, amended RPJC 25(c)(1) requires the clerk of the superior court (not appellant) to serve copies of the *Notice of Appeal*, immediately upon its filing, on the parties, court reporters, juvenile court word processing personnel, and the clerk of the appropriate division of the court of appeals. Certain transcripts are automatically included in the record on appeal. RPJC 25(d)(2) now specifies particular proceedings that are to be automatically transcribed and filed, subject to a party's option to delete the transcript from the record on appeal. The obligation of court reporters to prepare, file, and distribute appropriate transcripts is no longer conditioned on appellant's filing and serving a detailed *Designation of Transcript*. The court reporter(s) and/or word processing personnel of the juvenile court are required to file the completed original transcript with the clerk of the court of appeals, no later than:

> (1) 30 days after the filing of a *Notice of Appeal* by a governmental agency or of a *Notice of Appeal* stating that appellant proceeded with appointed counsel in the juvenile court, or
> (2) 30 days after service of an order of the presiding judge of the juvenile court appointing counsel to represent the appellant of appeal, or
> (3) 30 days after the appellant [who is not proceeding with appointed counsel on appeal] makes satisfactory arrangements to pay for the transcript.
> (See, RPJC 26(b)(1),(2), and (3).

The following transcripts are automatically included in the record on appeal:

> (1) in a delinquency or incorrigibility appeal, the adjudication and disposition hearing and any separate restitution hearing;
> (2) in a transfer appeal, the probable cause and transfer phases of the transfer hearing.

(cont. on pg. 7) ☞

(See, RPJC 25(d)(2)(i) and (ii).

If you want to add a transcript or delete a transcript from the list that is automatically included in the record on appeal, you must file a *Designation of Record* not later than five (5) after the *Notice of Appeal* is filed, requesting the court reporter or word processing operator to add or exclude a transcript from the record on appeal. RPJC 25(e)(3). File the *Designation of Record* with the clerk of superior court. If you file one, however, you must serve a copy of the *Designation of Record* on all parties and on each affected court reporter or juvenile court word processing operator. RPJC 25(e). You can comply with the service requirements of RPJC 25(e) by mailing a copy of the *Designation of Record* to all parties and the affected court reporter(s) and/or word processing operator(s). RPJC 29(a); Rule 5(c), Ariz.R.Civ.P.. The *Designation of Record* should identify the name and address of the court reporter(s) or word processing operator and the date of mailing on a certificate of mailing attached to the *Designation of Record*.

QUESTION # SIX: Is the juvenile's Red File or Social File automatically included in the record on appeal?

No. The juveniles Social File is also called the Red File, because all the reports in the Social File are/were actually housed in a file that is/was red in color. The Social File is different from the Legal File. The Social File contains disposition report(s), written reports of any psychological examination(s) conducted on the juvenile, counseling reports, school records, and any related correspondence. The Legal File includes certified copies of all pleadings, orders, and other documents filed with the clerk of the superior court. The Legal File is automatically included in the record on appeal, unless any portion is deleted pursuant to RPJC 25(e). RPJC 25(d)(ii).

"The Social File is not automatically included in the record on appeal. If you wish to include the Social File in the record on appeal (e.g. because you have an issue regarding the disposition imposed on your client); you must designate the Social File in the *Designation of Record* form."

The Social File is not automatically included in the record on appeal. If you wish to include the Social File in the record on appeal (e.g. because you have an issue regarding the disposition imposed on your client); you must designate the Social File in the *Designation of Record* form. RPJC 26(e)(1).

QUESTION # FIVE: If I discover that an automatic or requested transcript was not filed with the clerk of the Court of Appeals and my Opening Brief is now due within 20 days, can I file a *Motion to Vacate Notice of Completion of Record* with the clerk of the Court of Appeals?

Yes. The 1998 amendments significantly changed the procedure in this area. Under former RPJC 26(f) and (g), service of the *Designation of Transcript* imposed on the court reporter the duty to prepare, file, and distribute the designated transcript within thirty (30) days of service. A court reporter had no obligation under the Rules, if the court reporter was not served with a Designation of Transcript Former RPJC 26(c) authorized the clerk of the Court of Appeals, after the appeal had been docketed, to file the record as received and to immediately mail notice to all parties of the date on which the appeal was docketed. Appellant's Opening Brief was due within twenty (20) days after the mailing of this notice. See former RPJC 27(b). The notice contemplated by former RPJC 26(c) merely notified counsel that the record had been filed, not that it was "complete". Therefore, the running of the 20-day period for filing Appellant's Opening Brief in the Court of Appeals was not affected by the lateness or absence of a transcript.

Now, counsel is no longer required to file a *Designation of Transcript*. The 1998 amendments eliminated the *Designation of Transcript* and placed the responsibility on the clerk of the superior court to review the court file and to serve a copy of the *Notice of Appeal* on each court reporter or word processing operator who is required to file a transcript of proceedings automatically included in the record on appeal. RPJC 25(c)(1) and 25(d)(2). The clerk of the Court of Appeals is now required "upon receipt,. . . [to] file each portion of the record on appeal . . . [and] mail notice to all parties of the date on which the record on appeal is complete". RPJC 26(e). In this regard, the 1998 amendment differs from its predecessor, former RPJC 26(c), and conforms to Rule 31.10, R.Crim.P.. Rule 31.10, *supra*, likewise requires the "clerk of the appellate court . . . to immediately give notice to all parties of the date on which the *record is complete*.

If a transcript is missing when the Opening Brief is due, you may file a *Motion to Vacate Notice of Completion of Record* and advise the Court of Appeals that a designated transcript, or one that is automatically included in the record on appeal, was not filed by the court reporter or word processing operator. Be sure to identify the court reporter/word processing operator and the date of the

(cont. on pg. 8) ☞

missing transcript. Alternatively, you can contact the court reporter, discuss the missing transcript(s), and determine when the court reporter can file the original transcript with the Court of Appeals and deliver a copy to you. If the court reporter can not file the original transcript and deliver a copy to you before the opening brief is due, you can still file a *Motion for Extension of Time* with the clerk of the Court of Appeals. Your motion must show "good cause". See, RPJC 24(c); Committee Comment to 1998 Amendments, RPJC 27(b). You should therefore advise the Court of Appeals in your *Motion for Extension of Time* that the missing transcript was included in the record on appeal (automatically or by designation); that you contacted and discussed the matter with the court reporter/word processing operator, and that the court reporter/word processing operator advised you that the missing transcript would be filed with the clerk and a copy delivered to you by a specific date. This approach will demonstrate due diligence on your part, constitute "good cause", and increase the prospect that the Court of Appeals will grant your *Motion for Extension of Time*.

QUESTION # FOUR: RPJC 26(b)(1) requires a court reporter to file the transcript no later than 30 days after the filing of a *Notice of Appeal*. If the court reporter can't comply, does the court reporter apply to the presiding judge of juvenile court or to the Court of Appeals for an extension?

The 1998 amendments delete the provision of former RPJC 25(i) that permitted court reporters or word processing personnel to apply to the presiding judge of the juvenile court for an extension of up to thirty (30) days for preparing and filing the transcript. Amended RPJC 26(b) now requires court reporters or juvenile court word processing personnel to file the transcript with the clerk of the Court of Appeals within thirty (30) days after the filing of the *Notice of Appeal*, if the *Notice of Appeal* states that the juvenile proceeded with appointed counsel in the juvenile court when the final order was filed. RPJC 26(b)(1). Because the court reporter or word processing operator is required to file the transcript(s) with the clerk of the Court of Appeals and not the clerk of the superior court, RPJC 29(b) does not apply. Therefore, any extensions of time would be addressed to the discretion of the Court of Appeals pursuant to RPJC 24(c). The court reporter or word processing operator may only apply to the Court of Appeals for an extension of time to file the transcript.

QUESTION # THREE: What is the page limit for the Opening Brief, Answering Brief, and Reply Brief?

The 1998 amendments eliminate page-limits unless the briefs are prepared in monospaced typeface. Otherwise, the word-count is the key. Amended RPJC 27(a) provides that ARCAP 13 and 14 apply to appeals from final orders of juvenile court, except that:

> (1) * * *
> (2) a principal [opening or answering] brief prepared in a proportionately spaced typeface may not exceed 7000 words, and a reply brief so prepared may not exceed 3500 words . . . .
> (3) a principal [opening or answering] brief prepared in a monospaced typeface may not exceed 20 pages, and a reply brief so prepared may not exceed 10 pages.

The word and page limits do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix. RPJC 27(a).

According to ARCAP 14(a), when briefs are produced with a proportionately spaced typeface, the text and footnotes must be 14 points or more, and the word count may not exceed an average of 280 words per page including quotations and footnotes.

"The 1998 amendments eliminate page-limits unless the briefs are prepared in monospaced typeface. Otherwise, the word-count is the key."

QUESTION # TWO: How does the Court of Appeals know that I complied with the word-count requirement of RPJC 27(a)?

To insure compliance, ARCAP 14(b) states that the brief must be accompanied by a *Certificate of Compliance*. The *Certificate of Compliance* must state the brief's line-spacing and either (1) that the brief uses proportionately spaced typeface and the name of the typeface, the point size, and the word count, or (2) that the brief uses monospaced typeface and state the number of characters per inch. When monospaced typeface is used, remember that the brief may have no more than 10 1/2 characters per inch. See, ARCAP 14 for more details.

QUESTION # ONE: Are juvenile appeals given precedence over other appellate cases?

Generally, yes. The appellate courts give juvenile appeals precedence over all other actions except extraordinary writs or special actions. RPJC 24(c). The time needed to assemble the record on appeal and the parties' briefing schedule also reduce the appeal's travel time from the filing of the *Notice of Appeal* to when the juvenile's appeal is deemed "at issue".

(cont. on pg. 9) ☞

The *Notice of Appeal* must be filed no later than 15 days after the "final order" is signed by the judicial officer and filed by the clerk. RPJC 25(a). The court reporter(s) and/or word processing personnel must file the transcript(s) with the clerk of the Court of Appeals no later than 30 days after the *Notice of Appeal* is filed, if the *Notice of Appeal* states that appellant was represented by appointed counsel in juvenile court when the final order was signed. RPJC 26(b). Appellant must file his/her opening brief with the clerk of the Court of Appeals within 20 days after the clerk of the Court of Appeals mails notice of the date on which the record is complete. RPJC 26(e) and 27(b)(1). Conceivably, the opening brief can now be filed a total of 65 days (15 + 30 + 20) from the date the "final order" is signed and filed by the clerk. Appellee's answering brief is due within 20 days after service of Appellant's opening brief and the reply brief is due within 10 days after service of the answering brief. RPJC 27(b)(2) and (3).

"Please be aware that newspapers, bright colored paper and trash, which have been found in some bins, are not to be placed in the bins."

The appeal will now be deemed "at issue" upon the filing the reply brief. RPJC 27(b)(4). Assuming there were no delays in the preparation of the record, issuance of the notice of completion of record, and the parties' briefing schedule, the appeal would be deemed "at issue" 95 days after the "final order" is signed and filed by the clerk. This time-line can be further shortened by a new wrinkle in RPJC 27. RPJC 27(b)(4) provides that the appeal will be deemed "at issue" if appellant files *Notice That No Reply Brief Will Be Filed*. Therefore, you can reduce the time-line by 10 days if you immediately review appellee's answering brief, decide that you will not be filing a reply brief, and file a written *Notice* to that effect with the clerk of the Court of Appeals. ■

RECYCLING PROGRAM UPDATE

By Michelle Wood
Legal Secretary, DUI Unit

The recycling program began in July of this year. So far, it has been going very well. We have recycled about 2,000 pounds of paper. Each bin holds approximately 200 pounds of paper. If each floor filled one bin per month, we would recycle literally a ton of paper each month. Presently, we are recycling that much paper about every 5 to 6 weeks.

We have had a few problems with items that are not part of the recycling program being placed in the bins. Please be aware that newspapers, bright colored paper and trash, which have been found in some bins, are not to be placed in the bins. It is imperative that we strictly adhere to the vendor's guidelines, if not, the vendor could decide to discontinue our recycling program.

We have not had enough newspapers to fill a bin in a month, so we will not be using the vendor to recycle our newspapers. Keep up the good work! ■

THE COURTHOUSE EXPERIENCE

By Lisa Kula
Training Administrator

Attorneys are needed to introduce young people throughout the Valley to the legal profession as practiced in the Superior Court of Arizona in Maricopa County. During the last eight years your peers have helped more than 29,800 students in Maricopa County to gain a better understanding of the courts and the legal profession through The Courthouse Experience.

Your help is needed to continue this successful program. All it takes is two-and-a-half hours of your time for one morning this school year. You will be matched with a Valley school to take 6th through 12th grade students through the downtown courthouse. For more information contact Lisa Kula. ■

ARIZONA ADVANCE REPORTS

By Steve Collins
Deputy Public Defender - Appeals

***In re Shane*, 276 Ariz. Adv. Rep. 11 (CA 1, 8/20/98)**

A.R.S. Section 8-341(T)(1) defines a "first-time felony juvenile offender" as one "who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult." Such a designation may have punitive consequences if the juvenile offender commits another felony.

(cont. on pg. 10) ☞

Shane was designated a "first-time felony juvenile offender" even though his offense was committed before the effective date of Section 8-341(T)(1) in 1997. The Court of Appeals held this was not a violation of the prohibition against *ex post facto* laws because there is no present punishment. The provision was only regulatory in giving a warning as to increased punishment for future felonious acts.

***State v. Raboy*, 276 Ariz. Adv. Rep. 3 (CA 1, 8/18/98)**

The defendant was convicted of robbery, a class 4 felony with three prior felony convictions. He was sentenced as a repetitive offender under A.R.S. Section 13-604 to twelve years imprisonment. The trial court found he was on parole when he committed the robbery and ordered the sentence to be served as flat-time under A.R.S. Section 13-604.02(B).

The defendant argued that under *State v. Tarango*, only Section 13-604 should apply so it should not be a flat-time sentence. The Court of Appeals notes that Section 13-604.02(B) specifically states it applies to all sentences "notwithstanding any provision of the law to the contrary." Therefore, it was held *Tarango* did not apply.

***In re David H.*, 276 Ariz. Adv. Rep. 15 (CA 2, 8/25/98)**

In a juvenile proceeding, a probation officer is a "peace officer" for the purposes of the assault on a peace officer statute.

***State v. Uriarte*, 276 Ariz. Adv. Rep. 20 (CA 1, 8/27/98)**

The defendant was convicted of child molestation. The alleged victim's mother sat through the trial before testifying. The defendant argued the mother should have been precluded as a witness under Arizona Criminal Procedure Rule 9.3 and Arizona Evidence Rule 615, "the rule of exclusion of witnesses."

The Court of Appeals found the constitutional provisions of the Victim's Rights Bill overrides the above rules. Therefore, it was held to be proper for the mother to testify.

The alleged victim's mother testified that the defendant's wife threatened to kill her if she testified against the defendant. The Court of Appeals held the admission of this testimony did not violate Arizona Evidence Rules 403 or 608(b), because it was properly admitted to show the bias of the defendant's wife when she testified.

A defendant is entitled to a twelve-person jury if they face a sentence of death or imprisonment for thirty years or more. Here, the defendant faced twenty-seven years imprisonment. The Court of Appeals held the fact he faced an additional forty-six-month term of community supervision did not entitle him to a twelve-person jury.

The trial judge admitted evidence of prior bad acts under Arizona Evidence Rule 404(b), finding there was sufficient evidence of these acts under the preponderance of the evidence standard. This was error as *State v. Terrazas* holds the profferer must prove by clear and convincing evidence that the prior bad acts were committed and the defendant committed the acts. Here, the improper admission was reversible error.

At trial, evidence was admitted as to three acts which the defendant had been acquitted on in a previous trial. In dicta, the Court of Appeals notes this was not a violation of double jeopardy.

The concurring and dissenting judge found the clear and convincing analysis to be a credibility assessment exclusively within the province of the trial court.

***State v. Chabolla-Hinojosa*, 277 Ariz. Adv. Rep. 5 (CA 1, 9/3/98)**

The defendant delivered a car loaded with marijuana. He was convicted of possession for sale and transportation for sale. The Court of Appeals held the possession of marijuana for sale was incidental to the transportation of marijuana for sale, and therefore, was a lesser-included offense.

"A lesser-included offense can have the same or lesser penalty as the greater offense." It was a violation of double jeopardy to convict the defendant of both offenses.

***State v. Klausner*, 277 Ariz. Adv. Rep. 24 (9/10/98)**

Pursuant to A.R.S. Section 28-692, an instruction was given in this DUI case that if within two hours of driving, there is a blood alcohol concentration of 0.10 or more, "it may be presumed that the defendant was under the influence of intoxicating liquor." The Court of Appeals held this did not impermissibly shift the burden of proof because it was merely a permissive presumption.

***State v. Proctor*, 277 Ariz. Adv. Rep. 14 (CA 2, 9/8/98)**

The fraudulent scheme and artifice statute is not unconstitutionally vague or overbroad. Under the statute the prosecution does not have to prove the victim relied on the fraudulent representations.

(cont. on pg. 11) ☞

It was error for the trial judge to order restitution to be paid to victims on uncharged offenses admitted as prior bad acts evidence. The Court of Appeals held it was proper to include interest on the restitution because it was contemplated under the terms of the transactions between the defendant and the victims. The trial court must reduce the amount of restitution by the value of property the victims received.

***State v. Marshall*, 278 Ariz. Adv. Rep. 23 (CA 2, 9/22/98)**

The FBI lab declares a DNA match if corresponding bands in samples vary in length no more than plus or minus 2.5 percent. The Court of Appeals held this "match window" goes to the weight of evidence, not to admissibility of this evidence.

***State v. Yoshida*, 278 Ariz. Adv. Rep. 25 (CA 1, 9/22/98)**

A police officer responded to a report that the defendant might attempt suicide. When the officer tried to restrain the defendant from running away, the officer was bitten by the defendant. The defendant argued she was not guilty of aggravated assault on a police officer because the officer was not engaged in her official duties at the time of the assault. The Court of Appeals rejected this argument. ■

SELECTED 9TH CIRCUIT OPINIONS

By Louise Stark
Deputy Public Defender - Appeals

***United States v. Keating*, 147 F.3d 895 (9th Cir. (Cal) 1998)**

Defendants were charged and convicted of federal crimes involving fraud perpetrated through and upon Lincoln Thrift and American Continental Corp. Jury questionnaires asked whether panelists recalled earlier publicity about the same parties, including their standing state convictions for related offenses. At the federal trial, defendants deliberately did not voir dire the panel on their knowledge of defendants' prior state convictions. After the federal conviction, defendants investigated this possible bias. Affidavits and testimony showed that at least one juror, who did not know of the state convictions before he sat on the jury, found out about them during trial from other jurors. Error or prejudice due to pretrial publicity was waived by not questioning on this issue. Exposure during trial to extrinsic information presented a different situation. The government had the burden of showing that receiving this extrinsic information during trial did not contribute to the verdict. A new trial must be ordered if there is a reasonable probability that the improper material could have impacted the verdict. Here, where the juror was told by a fellow juror that defendant was already serving a sentence "for a previous trial on the same thing[,] [t]he only difference was it was not federal" there was substantial risk that the information was used in deciding the case. As it could not be said that the error was harmless beyond a reasonable doubt a new trial is necessary. A number of factors are set out to be used in determining whether the information was likely to have impacted the decision unfairly.

***United States v. Plunk*, 153 F.3d 1011 (9th Cir. (Alaska) 1998)**

Police testimony in a drug trial regarding the typical use of code words, what the codes were, and their meanings when used in the defendant's conversations was not error, it was proper expert testimony. *Daubert* decision (analyzing Fed. Rule of Evid. 702 and *Frye*) applies to new scientific evidence. Police testifying as experts with specialized knowledge, isn't the same as scientific evidence, and needn't meet the same standard for admissibility.

Jurors heard tapes in English and had transcripts during trial, with the admonition that the tapes, but not the transcripts, were the actual evidence. The transcripts were provided as an aid. In deliberations the jury asked for and received the tapes and transcripts, over the defendant's objections, with the same admonition to only consider what was on the tape as evidence. No error.

***Babbitt v. Calderon*, 151 F.3d 1170 (9th Cir. (Cal) 1998)**

Defendant was convicted of first degree murder and sentenced to death despite a defense that included a claim of Post Traumatic Syndrome Disease, and testimony that due to brain damage he could not harbor malice aforethought nor form the intent to commit theft or rape. At sentencing some evidence was also presented of his usual kind nature, history as a victim of abuse and family history. On P.C.R. defendant claimed ineffective assistance due to his lawyer's choice of using both PTSD and a seizure disorder defense, thereby diluting both. Because neither was a terribly strong defense, but testimony supported both, this was a reasonable decision. He also claimed that the decision not to put on different witnesses regarding PTSD, experiences in Vietnam, his history of abuse, and not finding out about a family history of mental illness each were ineffective acts or omissions that contributed to the unfavorable outcome. Each was rejected either on the grounds it would have been

(cont. on pg. 12) ☞

cumulative, would not have had an impact or that sufficient investigation had been done. Simply showing what else his lawyer might have looked for or could have done was insufficient to prove that the lawyer's representation fell below the standard of a reasonable lawyer.

***Means v. Northern Cheyenne Tribal Court*, 1998 WL 51369 (9th Cir. (Mont) 1998)**

Prior to 1990, it was clear that Indian tribal courts could exercise criminal jurisdiction over their own members but, that they could not (and cannot) exercise criminal jurisdiction over non-Indians. In 1990 the Supreme Court held that tribal courts had no criminal jurisdiction over Indians who were not members of the court's tribe. Congress promptly amended the Indian Civil Rights Act, which defines and describes the jurisdiction of tribal courts over various offenses and persons. The amendment provides that non-member Indians are subject to criminal jurisdiction for offenses committed within the boundaries of the tribal court's authority.

Means is a member of the Sisseton-Wapaton (Sioux) tribe, living within the boundaries of the Northern Cheyenne Indian Reservation. He was charged in 1997 with 15 crimes alleged to have occurred between 1978 and 1988 on the Northern Cheyenne Reservation, while he lived there. Means claims that he is a "non-member Indian" for purposes of the Northern Cheyenne Tribal Court, as he is not a member of the Northern Cheyenne, and he claims this deprives the tribal court of jurisdiction over him. He filed a petition for habeas corpus with this claim prior to trial.

The 1990 Supreme Court interpretation of the law (finding the tribal court has no jurisdiction over non-member Indians) is retroactive. Congress' amendment delegating new jurisdiction to the tribal courts is not retroactive. Because the offenses occurred prior to the amendments, the amendments do not apply to Means. To hold otherwise would subject Means to more potential punishment than existed when the alleged offenses occurred, as he could be convicted in both tribal and federal courts. And it would deprive him of a valid defense that existed then. Both results would violate the ex post facto clause. The writ of habeas is an appropriate vehicle by which to resolve jurisdiction before trial in this case.

***United States v. Odedo*, 1998 WL 537936 (9th Cir. (Wash) 1998)**

Odedo was charged with multiple counts of wire fraud, and use of a false social security numbers for running a telemarketing scam. He reached a plea agreement with the government but, at the plea proceeding, it was rejected by the judge (too lenient). He later pled guilty to all counts, but with no plea agreement. At this plea proceeding, the defense waived the reading of the indictment. The defendant acknowledged that he had read the indictment, discussed the charges with his lawyer, and read the previous plea, which contained a true factual statement as to the one count it encompassed. The prosecution then gave a factual basis for the other 13 counts and the plea was accepted. Before sentencing, Odedo tried to withdraw his guilty plea, at least to the 13 counts for which there never was an agreement. This was denied. Because the court never informed him of the nature of the charges during the second plea proceeding (as required by federal rule of procedure) the plea is vacated. Relying on the fact that the defendant had discussed the charges with his attorney was not sufficient.

***United States v. Smith*, 1998 WL 527066 (9th Cir. (Cal) 1998)**

An illegally obtained tape recording that began a criminal investigation did not taint the rest of the evidence collected. Smith was a Vice President of a publicly traded software company. On discovering that a mistake in the budget would affect the next year's earnings, Smith began selling off his own stock in the company, and "selling short" (i.e. selling stock he didn't have betting that before the transaction was complete he'd be able to buy it slightly later at less than he'd just sold it, then get the profit.) He did this throughout June 1993 avoiding about $150,000.00 in losses by selling his stock before it went down, and making about $50,000.00 on the short sales. Right after discovering the budget problem Smith left a message on the work voice mail of another employee, at another branch of the firm. It started out "Hi Angie. It's Rich. Lou and Tom [found a mistake in the budget.]"and revealed the caller's plans to sell his stock and sell short. The voice mail message was stolen by a third employee who guessed Angie's password, forwarded the message and later taped it. The tape was passed to another employee, who played it for a U.S. Attorney and identified the people whose names were mentioned. The U.S. Attorney told the F.B.I., which passed it to the S.E.C. staff attorney as "an anonymous informant told this U.S. Attorney that [defendant] discussed insider trading on a tape held by the informant." The S.E.C. investigated, obtained documents and deposed witnesses, all before obtaining a copy of the tape recording in July 1994. The S.E.C. turned the matter back to the U.S. Attorney's office, and that office continued to collect interviews and documents for another 18 months before charging the defendant.

First, this court resolved a conflict between two acts. The actions of the hacker and the tape recording fell

(cont. on pg. 13) ☞

under both the Stored Communications Act and the Wiretap Act. The S.C.A. spells out criminal and civil penalties for stealing stored communications, but also says that preclusion of information obtained in violation of the S.C.A is not allowed as a judicial remedy for violation. The Wiretap Act allows suppression of evidence obtained in violation of its provisions. This court found that as the hacker clearly did the extra actions necessary to take her from merely having "access" to the stored communication, and actually illegally "intercepted" the message, this made suppression of the tape under the Wiretap Act appropriate. This court concludes that the trial court correctly denied the defense motion to preclude the rest of the government's evidence as being derived from the illegally intercepted wire communication. This court finds that the illegally seized message did not significantly direct the investigation towards the other evidence for which preclusion was sought, nor did the existence of the tape coerce or induce any of the testimony. The third-hand version of the message given to the S.E.C. at the start of their investigation attenuated the nexus between the tape and the other evidence. The other evidence was deemed not derived from the taped message.

The court also holds that the 9th Circuit requires proof that the insider in possession of inside information actually use the information in deciding to trade. It isn't sufficient to merely prove that the defendant had insider information and traded in the stock.

***People of the Territory of Guam v. Shymanovitz*, 1998 WL 547097 (9th Cir. (Guam) 1998)**

Admitting evidence of the content of sexually explicit magazines depicting homosexual activity was improper and warranted reversal of the defendant's convictions for criminal sexual conduct involving children, assault, and child abuse. It was not relevant to any element, not offered for any proper purpose, and not admissible under 404(b).

The defendant worked at a boys school. He took the eleven named student/victims hiking, camping, and had them sleep over. In his home police found two articles in sexually explicit magazines. The government sought to introduce the articles at trial to establish intent to commit the crimes. The two articles were works of fiction each involving an older male having sex with a minor. The court deferred ruling on the pretrial motion, but the state went ahead and brought the evidence out in testimony anyway. At trial the police witness testified to seizure of condoms, surgical gloves, K-Y jelly, children's underwear, sexually explicit magazines (one of which was Playboy, and the rest depicting male adult homosexual activity except for the two stories); the witness described in great detail the contents of the photographs, ads, and the two pieces of fiction. The two articles, K-Y and a page from a calendar were admitted into evidence. There was no evidence or claim that the magazines were used in any way in committing the crimes. The defense was that the crimes did not occur, at least not with the defendant. Two victims testified that they made up the accusations. The crimes charging actual penetration did not have an element of intent; crimes charging improper touching had elements of sexual motivation or purpose, but this is distinguished from the usual "motive" or intent. This court holds that possession of the magazines wasn't probative of guilt, but only of the defendant's apparent taste for pictures of homosexual acts or literature that included homosexual acts with minor boys. The prosecutor argued in closing that the items were relevant to prove defendant's "intent and motivation" to perform the charged acts, and recounted in great detail the various acts portrayed in the magazines, including use of various sexual accessories. This court calls the trial prosecutor's stated basis for admission a pretext, when the real reason was simply to shock the jury and exploit their fears and prejudices. The court points to the danger of owning a library of mystery, true crime literature, or even *Oedipus Rex* if it were to find the magazines relevant. The opinion also notes that even if the magazines were relevant to intent or to a 404(b) issue (they weren't) it would have found their probative value outweighed by danger of unfair prejudice of portraying defendant as a homosexual, and someone interested in the unusual sexual practices depicted in the magazines. ■

BULLETIN BOARD

New Attorneys

Nine new attorneys will be joining Russ Born's New Attorney training class on November 2. They are:

Nick Alcock received his J.D. from ASU as well as his M.B.A. from the ASU College of Business. His undergraduate degree is from the University of California - Santa Barbara in Political Science. He has been serving as a law clerk for Group C.

Jose Colon earned a B.B.A. in Accounting from the University of Puerto Rico before continuing on there to receive his J.D. He most recently worked as an attorney for Stender & Larkin, providing services on immigration issues. He also served an internship with the Florence Immigration Project in Tucson.

(cont. on pg. 14) ☞

Elizabeth Flynn graduated with her J.D. from the University of Louisville. She was a Rule 38(e) intern at the Pima County Public Defender's office and has been serving as a Client Services Assistant with the office since August.

Robyn Greenberg graduated from McGeorge School of Law, University of the Pacific, Sacramento. She clerked for the Federal Public Defender's offices in Phoenix and Sacramento. She has been serving as a Client Services Assistant since August.

Jim Harris has spent the last four years as an attorney with the Navajo-Hopi Legal Services. He earned a B.A. in History from the Grinnell College of Law in Iowa and received his law degree from ASU. He also spent time as a law clerk for the Arizona Capitol Representation Project.

Chris Palmisano first spent time in the office as a volunteer ADA reader in Group A. He received his B.A. in Psychology from Boston College, then attended Suffolk University Law School in Boston where he received his J.D. For the past wo years, he has been an attorney with Phillips & Associates.

Ian Pettycrew graduated from ASU College of Law. He has spent the last two years as a law clerk/bailiff for Judge Daniel Barker before joining the office. He holds a B.A. in Sociology from the University of Arizona.

Shannon Slattery received her J.D. degree from Creighton University following her graduation from the University of Arizona, with a Political Science degree.

Ronald Van Wert joins the office from the firm of Beus, Gilbert & Devitt. He holds a B.S. in Accounting from the University of Arizona and his J.D. from the University of California Hastings College of the Law.

Thomas Garrison, who will be joining our Dependency Division on November 16, spent the last three years in private practice handling juvenile and dependency cases. He attended ASU where he received his B.A. in Psychology before heading for the Mississippi College School of Law for his J.D.

Attorney Moves/Changes

Mary Ann Twarog, Defender Attorney who has served in our Juvenile, Trial and Mental Health divisions over her nine year career with this office, left the office effective October 14.

Richard Zielinski, an attorney with Group D since 1996, left the office for private practice on October 9.

New Support Staff

Tina Bahe, assumed the duties of Office Aide for Trial Group A on September 30.

Laura Collings joined the office as a Legal Secretary for Group C on November 2. She had served as the Criminal Traffic Clerk at Northeast Phoenix Justice Court since 1996.

Jennifer Doerfler joined the office as a part-time teleworker transcriptionist on September 28.

Malik Donahue became a temporary part-time Office Aide on October 20.

Joyce Geller, Legal Secretary, joined the office in Juvenile Durango on October 19. She holds a B.A. in Business from the University of Phoenix as well as a A.A. in Administration of Justice from Phoenix College.

David Jaramillo is the new face at the front reception desk. David has a background providing customer service for Sterling Human Resources as well as Bank One. He began working on October 5.

Lois Keith has been hired as a Legal Secretary for Group A, effective November 2. She has worked with the county Clerk of the Superior Court since 1992.

Dawn Lomahaftewa started work as a Secretary in the Dependency Unit on October 19. She holds a B.S. in Psychology from N.A.U. She comes to the office from the county Law Library where she worked as a Library Aide. She has previous experience as a teacher's aide and administrative assistant at Eastman Kodak/Danka.

Denise Martinez, temporary Reception Trainee, started with Group C on October 26.

J.T. McEwen, will assume a volunteer position performing legal research under Dan Lowrance. J.T. has attended the University of Tulsa College of Law and holds a B.A. in Business Administration from Western State College of Colorado.

Norma Muñoz has been rehired into the office, effective October 5, and returns to her former role as one of our Initial Services Specialists.

Amy Oberholser, Legal Secretary, joined Trial Group A on October 5. She holds a certificate from Technical Vocational Institute in Paralegal Studies and has worked as a legal secretary for private firms as well as the Attorney General's Office.

(cont. on pg. 15) ☞

Roberta Rodriquez, Legal Secretary, joined Group D on September 28. She has previous secretarial experience with the H.W. Johnson organization.

Jennifer Sandoval, joined the office as a temporary office aide for Appeals on October 5.

Jill Schroeder, Investigator, will begin working with Group D on October 26. Jill has worked for seven years with a private investigative firm that contracts with the Public Defender's Office in San Francisco. Jill holds a B.A. in Social Ecology with an emphasis in Criminology from the University of California - Irvine.

James Shuptrine started as an Office Aide in Records on October 15.

Glorianna Wood, was hired as a Legal Secretary for Group D effective October 5. She had worked at ADOT since 1992.

Support Staff Moves/Changes

Jackie Conley, Legal Secretary for Group C, achieved permanent status on October 19.

Michael Eskander became a Law Clerk for Group C on November 2. He had worked previously in the office as a Client Services Assistant.

Mike Fusselman, long-time Lead Investigator of Group D, has been asked to assume a special work assignment as Supervisor of the Records Division. Mike has been with the office since 1981 and Lead Investigator since 1988. Mike received his Master's Degree in Public Administration in 1996 from ASU. He will assume responsibilities over Records, Initial Services and our Process Server. **Rick Barwick**, Senior Investigator for Group D, will be designated as the acting Lead Investigator for the group.

Sandra Quinonez resigned as the Office Aide for Trial Group A effective October 2.

After 24 years of service, **Don Vert** has resigned from the office effective October 9. Don has performed several key administrative and records functions in the office over his career, and he will be missed. Periodically, he may assist us in temporary assignments in the weeks and months ahead.

Stephanie Villalobos assumed a special work assignment as Lead Secretary for Group B starting October 5. Stephanie has been with the office since last year, and previously worked as a legal secretary for the legal firm of Smith and Gonzalez. ■

September 1998
Jury and Bench Trials

Group A

Dates: Start/Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
8/20-8/26	**Lawson** Brazinskas	Baca	Schesnol	CR 97-11406 Burglary/ F4 1 prior (not allegeable)	Not Guilty	Jury
9/2-9/24	**Kent & Leal**	Baca	Breeze	CR 95-05906 Murder 2°/ F1; Agg. Assault/ F3	Hung Jury	Jury
9/7-9/15	**Howe**	Jarrett	Doering	CR 98-04422 2 cts. Agg. Assault/ F3D	Not Guilty	Jury
9/10-9/11	**Lawson** Brazinskas	Ellis	Morrison	CR 97-04131 Agg. DUI/ F4 on parole with a prior	Guilty	Jury
9/16-9/17	**Hernandez**	Bollinger	Eckhardt	CR 98-03209 Agg. DUI/ F4	Guilty	Jury
9/16-9/29	**Hruby**	Galati	Gadow	CR 97-11300 Att. Murder 2°/ F2D; Agg. Assault w/serious Physical Injury/ F3D	Hung Jury	Jury
9/16-9/21	**Farrell**	Gottsfield	Hernandez	CR 90-12339 Agg. Assault/ F3D	Not Guilty	Jury
9/16-9/23	**Parsons** Brazinskas *Garrison*	Jarrett	Mroz	CR 97-14503 7 cts. Sexual Conduct w/minor/ F2; POM/ F6	Hung Jury on 1 ct. of Sexual Conduct w/minor Guilty of POM Guilty of 6 cts. Of Sexual Conduct w/minor	Jury
9/23-9/28	**Ellig** Jones	Hilliard	Baldwin	CR 97-05923 Conspiracy to Commit 1°Murder/ F1	Guilty	Jury
9/28-9/30	**Green**	Jarrett	Morrison	CR 98-03166 2 cts. Agg. DUI/ F4	Guilty	Jury
9/29-10/1	**Parsons** *Garrison*	Cole	Smith	CR 97-09624 PODD/ F4 POM/ F6 PODP/ F6 with 4 priors alleged(negotiated after jury verdict to dismiss all priors and PODD and admit POM/PODP in another case; stip concurrent)	PODD-Hung Jury (4-4) POM-Guilty (Admitted at trial) PODP-Guilty	Jury

(cont. on pg. 17) ☞

Group B

Dates: Start/Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Tria
8/26-9/16	**Noble** Castro *Oliver*	Arellano	Sigmund	CR 97-04308 Attempted First Degree Murder/ F2 Inter. Jud. Proc./ M1	Guilty Guilty	Jury
8/31-9/2	**Park**	Comm. Reinstein	Huls/ Lehman	CR 98-05612 POND (on probation) w/priors/ F4	Guilty	Jury
9/2-9/8	**Walton**	Jarrett	Gaertner	CR 98-00522 Aggravated DUI w/Minors in Car/ F6	Guilty	Jury
9/8-9/10	**LeMoine** Kasieta *Brink*	Galati	Dion	CR 95-11520 Kidnaping/ F2D Armed Robbery/ F2D Agg Assault/ F3D	Not Guilty Hung (vote unknown) Guilty	Jury
9/10-9/15	**Doerfler**	O'Toole	Wendell	CR 98-09223 Attempt Obtain Narc Drugs by Fraud/ F4	Guilty	Jury
9/14-9/15	**Peterson**	Hutt	Gaertner	CR 97-13591 Agg. DUI/ F4	Not Guilty of Agg DUI, Guilty of Driving on Suspended License/M1	Jury
9/16-9/17	**Lopez**	Howe	Huls	CR 98-02462 Aggravated Assault/ F6	Guilty	Jury
9/12-9/22	**Peterson**	O'Toole	Wolak	CR 98-07173 Resisting Arrest/ F6	Guilty	Jury
9/21-9/23	**Blieden** Castro	Hotham	Merchant	CR 98-03279 Robbery/ F4 (w/one prior) Theft/ F6 (w/one prior)	Not Guilty Not Guilty	Jury
9/28-9/29	**F.Gray** Corbett	Hutt	Neuge-bauer	CR 98-10508 Agg Assault/ F3D	Guilty	Jury
9/30-9/30	**Doerfler**	Daughton	Clark		Judgment of Acquittal	Bench

(cont. on pg. 18) ☞

Group C

Dates: Start/Finish	Attorney Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
9/2-9/3	**Gaziano**	Barker	Stewart	CR 98-91752 1 ct. Sell Marij./ F3	Guilty	Jury
9/3-9/3	**Schmich**	Schneider	Bennink	CR 98-91668 1 ct. Residential Burg/ F3	Not Guilty	Jury
9/3-9/10	**Burkhart & Lorenz**	Ishikawa	Vick	CR 98-90956 2 cts. DUI	Guilty	Jury
9/14-9/16	**Klopp-Bryant & Shoemaker**	Ishikawa	Lundin	CR 97-95689 1 ct. Poss of Meth/ F4	Guilty	Jury
9/14-9/16	**Moore**	Ellis	Aubuchon	CR 98-92239 1 ct. Agg Assault/ F3D	Not Guilty	Jury
9/14-9/15	**Zazueta & Rosales**	Seidel	Gingold	CR 98-92340 2 cts. Agg DUI/ F4	Guilty	Jury
9/15-9/16	**Mabius & Ramos**	O'Melia	Craig	CR 98-91665 1 ct. POM for Sale/ F4	Not Guilty on Sale Guilty on Possession	Jury
9/17-9/17	**Rosales**	Ishikawa	Stewart	CR 98-90919 Sale of Crk Cocaine/ F2	Defendant pled	Jury
9/18-9/18	**Shoemaker & Ramos**	Hamblen	Anderson	TR 98-03664CR DUI, Speeding, and other Misdemeanors	Not Guilty	Jury
9/23-9/29	**Klopp-Bryant** *Turner*	Ishikawa	Aubuchon	CR 98-92968 1 ct. Agg Assault/ F3D 1 ct. Theft/ F5	Not Guilty on Both Counts	Jury

Group D

Dates: Start/Finish	Attorney Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench / Jury Trial
9/10-9/22	**Martin**	Akers	Tucker	CR 97-09909 Agg. Assault/ F2 Disorderly Conduct/ F6 Burglary/ F2	Not Guilty all counts	Jury
9/10-9/15	**Feldman** O'Farrell	Gerst	Gadow	CR 98-06737A Burglary/ F3, Poss Cocaine/ F4, Poss Drug Para/ F6	Guilty	Jury

(cont. on pg. 19) ☞

9/16-9/17	**Crews & Mussman** Fusselman	Gerst	Anthony	CR 98-006350 1 ct. Possession of Dangerous Paraphernalia/ F6; 1ct. Possession of Dangerous Drugs/ F4	Not Guilty both counts	Jury
9/23-9/23	**Nickerson** Bradley *Fairchild*	Akers	Farnum	CR 98-07656 Agg. Assault w/3 priors on parole/ F3	Client plead after the Vol. Hearing to Agg Asslt. non-dangerous w/1 prior.	
9/22-9/24	**Silva**	Gerst	Kalish	CR 98-06007 Agg. Assault Disorderly Conduct	Misd. Assault Misd. Disorderly Conduct	Jury
08/31-9/10	**Enos** **Schreck** **Leyh** *Fairchild* *Bowman*	Dann	Pitts	CR 97-12988 Kidnap Agg. Assault Attempt/Com Sex Assault-Rape	Guilty	Jury

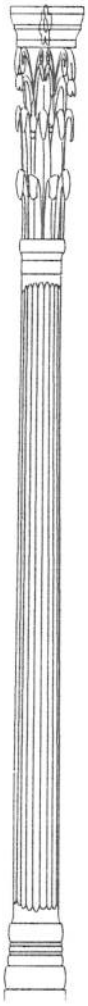
DUI Unit

Dates: Start/Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
9/10-9/11	**Carrion**	Barker	Moore	CR 97-02396 1 ct. Agg DUI/ F4	Guilty	Jury
9/15-9/17	**Carrion**	Schneider	Cappellini	CR 98-04442 2 cts. Agg DUI/ F4	Guilty	Jury
9/23-9/23	**Carrion**	Hall	Lawritson	CR 96-12390 1 ct. Agg DUI/ F4 w/priors	Guilty, Priors dismissed by Court	Jury
9/28-10/1	**Timmer** Applegate	Gerst	Lawritson	CR 97-02256 1 ct. Agg DUI/ F4	Guilty	Jury

Office of the Legal Defender

Dates: Start/Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
9/10-9/14	Canby Horrall	Gerst	Gadow	CR 98-06737 Burg.2° / F3	Guilty	Jury
9/29	**Parzych**	Hall	Wolak	CR 98-02661 POM/ F6 PODP/ F6	Guilty	Jury
8/27-9/2	**Ivy**	Wilkinson	Hicks	CR 97-12794 (A) Meth.Lab/ M2	Mistrial	Jury

Mark Your Calendar:



The Art & Science of Death Penalty Litigation

December 3 & 4, 1998
Holiday Inn Express
5750 E. Main Street
Mesa, AZ

Registration materials will be arriving soon.
May qualify for up to 12.25 CLE hours.
Smoking section available.

Sponsored by
Maricopa County Public Defender's Office

INSIDE ADDITION

The Insider's Monthly

October 1998

TRAINING NEWS

By Lisa Kula
Training Administrator

The rumblings you have been hearing aren't the distant echoes of a California earthquake, but the beginnings of our software conversion. Starting on Monday, October 26, the migration from WordPerfect to Microsoft Office will begin. The strategy we have implemented for this change involves an intense four day training for 20 "power users," located throughout the office. These power users will be called upon to provide assistance and instruction to the other people in their area. The following is a list of the "power users." Be sure to identify the power user for your group.

Power Users:

Amy Bagdol	Admin
Chuck Brokschmidt	Information Technology
Taz Clark	Group C
Frances Coppinger	Durango
Frances Dairman	Admin
Salina Godinez	Admin
Lucie Herrera	Appeals
Elia Hubrich	Mental Health
Lisa Kula	Admin
Martha Lugo	Group D
Gene Parker	Information Technology
Julie Roberg	SEF
Sandra Sutphen	Dependency
Sherry Pape	Group A
Stacy Peterson	Group C
Susie Tapia	Information Technology
Diane Terribile	Admin
Dottie Storey	Admin
Terry Sullivan	Information Technology
Stephanie Villalobos	Group B

After the initial week of power user training, groups of ten support staff will attend two half-day training sessions. The schedule of who and when is still being developed. The Information Technology staff will then resume in-house training classes for the rest of the office. The new software installation will proceed on a group by group basis. Since this is a lengthy process that can not be completed overnight, there are some problems that will arise. Remember, when you're sharing information or sending files to save the document as a WordPerfect document if the person you are sending to hasn't had the new software installed. Your patience and understanding are greatly appreciated during this process. If you have any questions, please contact Chuck Brokschmidt or Lisa Kula. ■

PERSONNEL PROFILE

Marcus Keegan
Client Services Coordinator - Group B

If there is one thing that Marcus would like to make perfectly clear, it is the fact that there is more than one Marcus Keegan in Phoenix! This identity confusion has caused problems for our Marcus with Child Support Enforcement (he doesn't have any children), collection agencies, and suspicious DPS officers. So let's recognize Marcus for the great guy he is!

What is your idea of perfect happiness? A pina colada, a beach in Bali, no bills, and no job.

What is your greatest fear? Being stranded alone in a very wide open space (I'm slightly agoraphobic).

Which living person do you most admire? Jimmy Carter - he builds houses with Habitat for Humanity, he

solves international disputes, and has established programs to improve inner cities. Here is a man who has given up his presidential pension and Secret Service protection, while acting more "presidential" than anyone who's been in the office in 24 years.

Which living person do you most despise? Just one? Slobodan Milosevic, followed closely by John King, Lawrence Brewer, and Shawn Berry of Jasper, Texas.

Who are your heroes in real life? Martin Luther King, Jr., Gandhi, Mother Teresa, and anyone else who can set extremely high standards for themselves and others. . . and then live by them.

Who is your favorite hero of fiction? Odysseus.

What is the trait you most deplore in yourself? Procrastination.

What is the trait you most deplore in others? Closed-mindedness.

What is your greatest extravagance? Expensive wines.

On what occasion do you lie? Hmmm, well, I guess that depends on what your definition of the word lie is.

If you could change one thing about yourself, what would it be? My ability to read minds.

What do you consider your greatest achievement? Amateur night at the Funny Bone, Atlanta, GA on March 17, 1991.

What is the quality you most like in a man? Sense of humor.

What is the quality you most like in a woman? Sense of humor.

What do you most value in your friends? Loyalty.

If you were to die and come back as a person or thing, what do you think it would be? A grizzly bear.

If you could choose what to come back as, what would it be? Sammy Sosa - a great athlete, great attitude.

What is your motto? Mai Pen Rai - a Thai term. Literally translated as "never mind," but the more generally meaning is "to go with the flow." ■

THE LIGHTER SIDE

During the big DUI Dragnet, a Highway Patrolman waited outside a popular local bar, hoping for a bust. At closing time as everyone came out, he spotted his potential quarry.

The man was so obviously inebriated that he could barely walk. He stumbled around the parking lot for a few minutes, looking for his car. After trying his keys on five others, he finally found his own vehicle.

He sat in the car a good ten minutes as the other patrons left. He turned his lights on, then off, wipers on, then off. He started to pull forward into the grass, then stopped. Finally, when he was the last car, he pulled out onto the road and started to drive away.

The Patrolman, waiting for this, turned on his lights and pulled the man over. He administered the breathalyzer test, and to his great surprise the man blew a 0.00! The Patrolman was dumbfounded!

"This equipment must be broken!" exclaimed the Patrolman. "I doubt it," said the drunk, "tonight, I'm the Designated Decoy!" ■